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OFFICE OF PETITIONS

In re Application of :
Gardes : DECISION ON PETITION
Application No. 10/754,022 :
Filed: January 8, 2004 :
Dkt. No.: C02235US (26100.25C4) :

This decision is in response to the petition under 37 CFR 1.181 filed April 18, 2006.

This application was held abandoned February 14, 2005 for failure to timely file a proper response to a Notice of Informal or Nonresponsive Amendment (Notice) said to have been mailed January 13, 2005. Notice of Abandonment was mailed October 18, 2005.

Petitioner argues that the Notice mailed May 24, 2004 was not received at the correspondence address of record for the instant application.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

In support of the petition, petitioner has provided a copy of the docket record where the Office communication would have been

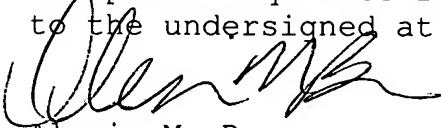
entered had it been received along with a statement from practitioner that a search of the docket record and file jacket indicated that the Office communication was not received.

In view thereof, the petition to withdraw the holding of abandonment is hereby GRANTED.

The Notice of Abandonment is hereby VACATED and the holding of abandonment is WITHDRAWN.

This application is being directed to Group Art Unit 3672 for re-mailing of the Notice.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'Alesia M. Brown', is written over the printed name.

Alesia M. Brown
Petitions Attorney
Office of Petitions